

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

GEM REFRIGERATOR COMPANY¹

Employer

and

Case 4–RC–20688

UNITED ASSOCIATION OF JOURNEYMEN AND
APPRENTICES OF THE PLUMBING AND
PIPEFITTING INDUSTRY OF THE U.S.
AND CANADA, STEAMFITTERS LOCAL 420²

Petitioner

**REGIONAL DIRECTOR’S DECISION AND
DIRECTION OF ELECTION**

The Employer, Gem Refrigerator Company, manufactures, assembles, and installs commercial and residential modular refrigeration units. The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S. and Canada, Steamfitters Local 420, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of about seven EPA-certified Mechanics who are employed by the Employer.³ A hearing officer of the Board held a hearing, and the parties filed briefs with me.

The Employer contests the Petitioner’s status as a labor organization within the meaning of Section 2(5) of the Act. Additionally, the Employer contends that the petitioned-for unit is inappropriate and that the only appropriate unit is a plantwide unit of Mechanics (including EPA-certified and Non-certified Mechanics) and Mechanic/Truck Drivers. Finally, the Employer contends that Brian Casimiro, who was hired to work during the summer of 2003, is not an eligible voter, while the Petitioner contends that he is eligible as a seasonal employee.

¹ The Employer’s name was amended at the hearing.

² The Petitioner’s name was amended at the hearing.

³ The Petitioner sought in its petition to represent, “[A]ll full-time service and installation mechanics, refrigeration mechanics and service technicians working out of the Employer’s Philadelphia, PA Facility.” In its brief, the Petitioner seeks to redefine the unit description, consistent with the position it took at the hearing, to include only the, “installation mechanics who are specifically trained, licensed, and certified by the federal government to fully install refrigeration systems.” Treating this request as a post-hearing motion to amend the petition, I hereby grant the motion.

For convenience, this Decision will refer to the employees sought by the amended petition as “EPA-certified Mechanics,” and the Employer’s other installation and service employees as “Non-certified Mechanics.”

I have considered the evidence and the arguments presented by the parties concerning these issues. As discussed below, I have concluded that the Petitioner is a labor organization. I have also concluded that the petitioned-for unit limited to EPA-certified Mechanics, but excluding Non-certified Mechanics and Mechanic/Truck Drivers, is inappropriate. I have additionally concluded that Casimiro is not an eligible voter because he does not have a reasonable expectation of employment with the Employer beyond the summer of 2003.

In this Decision, I will first provide a brief overview of the Employer's operations. Then, after discussing the labor organization issue, I will review the factors that must be evaluated in determining whether the unit sought by the Petitioner is an appropriate unit, and I will present in detail the facts and reasoning that support my conclusion. Finally, I will set forth the legal standards, facts, and analysis concerning Casimiro's status.

I. OVERVIEW OF OPERATIONS

The Employer, which has been in business for about 75 years, assembles modular refrigeration units at the shop at its manufacturing facility in Philadelphia, Pennsylvania (the Facility). The units are then disassembled at the shop and delivered to customers, where they are reassembled and installed. The Employer employs about 20 employees to manufacture, deliver, and install the refrigeration units. Seventeen of these employees are classified as Mechanics, and the other three are classified as Mechanic/Truck Drivers. Six or seven of the Mechanics have been certified by the federal Environmental Protection Agency (EPA) to work with refrigerants such as Freon.⁴ Operations Manager John Lillis and Shop Foreman Paul Kelz supervise all of the Mechanics and Mechanic/Truck Drivers.

II. LABOR ORGANIZATION

The Petitioner has approximately 4,000 employee members, many of whom participate in the affairs of the Petitioner, among other ways, by attending regular monthly meetings. The Petitioner is governed by a constitution and local bylaws and employs a Business Manager, eight Business Agents, and a full-time staff of Training Teachers. The Petitioner has previously been found by the Board to be a labor organization within the meaning of the Act. *Goad Company*, 333 NLRB 677 (2001); *Dual Temp Co., Inc.*, 322 NLRB 270, 271 (1996).⁵

The Petitioner negotiates collective-bargaining agreements with various employers on behalf of employees that it represents. The Employer asserts that the Petitioner is not qualified to represent the Employer's employees because it does not normally represent employees employed by manufacturing companies. However, the Board has held that a union's willingness to represent employees is the controlling factor in determining labor organization status, regardless of whether it previously represented similar employees. See *Mariah, Inc.*, 322 NLRB

⁴ The EPA-certified Mechanics are Michael Calafaty, John Fink, Raymond Hays, Shawn Kelly, Ronald Schmidt, Emmett Shackleford, and Brian Casimiro. As discussed later in this Decision, Casimiro was hired only for the summer of 2003.

⁵ The Petitioner's status was not contested in those cases.

586, 587 (1996).⁶ Here, the Petitioner is clearly willing to represent the Employer's employees. Moreover, the Petitioner has previously negotiated "specialty agreements" covering employees of manufacturing companies. I find that the Petitioner is an organization that admits employees into membership and exists for the purpose, at least in part, of dealing with employers concerning terms and conditions of employment. Accordingly, the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. *Alto Plastics Manufacturing*, 136 NLRB 850 (1962).

III. FACTORS RELEVANT TO EVALUATING THE APPROPRIATE UNIT

The Board's procedure for determining an appropriate unit under Section 9(b) is first to examine the petitioned-for unit. If that unit is appropriate, then the inquiry ends. *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative unit proposals of the parties. See, e.g., *Bartlett Collins Co.*, 334 NLRB 484 (2001); *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., *R & D Trucking, Inc.*, 327 NLRB 531 (1999); *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967), *enfd.* 411 F.2d 356 (7th Cir. 1969). It is well settled that the unit need only be *an* appropriate unit, not the most appropriate unit. *Morand Brothers Beverage Co.*, 91 NLRB 409, 419 (1950), *enfd.* on other grounds, 190 F.2d 576 (7th Cir. 1951). The Board's declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining. *Black & Decker Manufacturing Co.*, 147 NLRB 825, 828 (1964).

In determining whether a group of employees possesses a separate community of interest, the Board examines such factors as the degree of functional integration between employees, common supervision, employee skills and job functions, interchange of employees, contact among employees, fringe benefits, bargaining history, and similarities in wages, hours, benefits, and other terms and conditions of employment. *Home Depot USA, Inc.*, 331 NLRB 1289 (2000); *Esco Corp.*, 298 NLRB 837 (1990). The Board has held that a plantwide unit is presumptively appropriate under the Act. *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 136 (1962).

IV. FACTS

In determining whether the EPA-certified Mechanics have a community of interest separate from the Employer's other Mechanics and Mechanic/Drivers, I shall examine the following factors: job functions; employee contact, transfer and interchange; supervision; qualifications and training; and compensation and hours of work.

⁶ In *Mariah*, the Board found that the petitioning union was a labor organization although its constitution prevented it from representing employees in the industry involved in the case. In this case, there is no such prohibition.

A. Job Functions

All Mechanics and Mechanic/Truck Drivers perform similar tasks throughout the year, including manufacturing the refrigeration units, transporting and delivering them to the customers, and installing them. During the summer, the EPA-certified Mechanics work almost exclusively at various jobsites installing the units. In the winter, when there is a decreased demand for installation work, they work about 25 percent of the time at the shop, manufacturing and assembling the units, and they spend the remainder of their time at the jobsites. One of the EPA-certified Mechanics, Michael Calafaty, also drives a truck and delivers refrigeration units. The Non-certified employees work at the Facility about 25 percent of the time throughout the year, and they work at the jobsites for the remaining 75 percent of their time. They are not permitted to install the larger units because they do not have EPA certifications and therefore cannot work with refrigerants. However, they can install smaller modular units with pre-charged “quick connections” without coming into contact with any refrigerants. About 25 percent of the Employer’s overall business involves these quick connect units. The Non-certified Mechanics also may deliver the refrigerator units, install compressors and “walk-in” boxes, and service electrical malfunctions or problems with refrigerator doors.

Seven Mechanics, five of whom are EPA-certified, are assigned particular company vehicles, and they are permitted to take these vehicles home each night. The remaining employees are assigned company vehicles to use for specific jobs in the field. The three Mechanic/Truck Drivers drive the larger trucks. The Mechanic/Truck Drivers spend about 25 percent of their time driving, and the Non-certified Mechanics spend about 10 percent of their time driving.

When an employee is assigned to a job in the field, he may go directly to the jobsite without punching the time clock or stop at the Facility to pick up another employee to accompany him. Employees who are permitted to take their vehicles home are more likely to go directly to jobsites.

B. Contact, Interchange, and Transfers

For jobs in the field, employees work alone or in groups of two or three, depending on the size of the job. Usually, two employees are needed to deliver a refrigeration unit. EPA-certified Mechanics generally work with other EPA-certified Mechanics at the jobsite. In the shop, however, they work with the other Mechanics, and all of the Mechanics can perform the manufacturing work interchangeably. They also are likely to have contact with other Mechanics if they report to the shop before going out to the jobsite. There is no evidence concerning transfers.

C. Supervision

The employees are all supervised by Operations Manager Lillis and Shop Foreman Kelz. Lillis sometimes tells employees their assignments in advance, but if they do not have advance assignments, they come to the Facility and receive their assignments from Kelz. Lillis communicates with employees at the jobsites during the workday and inspects the work at the site.

D. Qualifications and Training

According to Lillis, to become an EPA-certified Mechanic, an employee need only attend a two or three-day training program. In general, the Employer seeks to hire applicants with good mechanical ability for all of its positions. The Employer also seeks employees with an electrical background, and some of the current employees have received electrical training at trade school or elsewhere. Most of the employees have been cross-trained on the job by other employees to perform all necessary jobs in the shop or at the jobsites.

E. Wages and Hours

All employees start at \$9.00 or \$10.00 per hour, and they may receive wage increases based on their length of service. The EPA-certified employees are generally paid higher wages; however, some Non-certified Mechanics with a long tenure of employment with the Employer are paid at similar rates.⁷ All employees receive the same fringe benefits, including health insurance, life insurance, disability insurance, and vacations.

All employees punch the same time clock at the Facility, but employees who report directly to the jobsite do not need to punch a clock. They all work the same hours regardless of classification, 7:00 a.m. or 8:00 a.m. to 4:30 p.m.

F. Bargaining History

There is no evidence of any collective-bargaining history for the Employer's employees.

IV. ANALYSIS

Based on a community-of-interest analysis, I find that the unit sought by the Petitioner is not an appropriate unit, and the only appropriate unit consists of all of the Employer's Mechanics and Mechanic/Truck Drivers. Thus, all of the Employer's employees have similar terms and conditions of employment. They all work the same shift, share the same benefits, have common supervision, and have contact with each other at the shop, where they may work together. When they report to the Facility they all punch the same time clock. While EPA-certified Mechanics are generally paid at a higher rate than Non-certified Mechanics, a Non-certified Mechanic with greater experience may be paid at the same level. Other than the EPA certifications, none of the Employer's employees have particular qualifications, skills, or training. All employees perform the same basic functions: manufacturing, delivering, and installing modular refrigeration units, although only the EPA-certified Mechanics work with the larger units because they are permitted to deal with refrigerants. The Employer's operations are functionally integrated, and while some employees spend less time at the Facility and more time in the field, all of the employees perform all aspects of this integrated operation.

The Petitioner contends that the EPA-certified Mechanics constitute a separate appropriate unit because they have a special certification to handle refrigerants. However, the additional certification is insufficient to establish that these employees have a separate community of interest from the Employer's other employees. Thus, the Mechanics attain EPA

⁷ The record does not indicate the actual wage rates for employees beyond their starting rates.

certifications simply by taking a two or three-day course. The EPA-certified Mechanics do not have higher skill levels than other employees, and their duties are similar to those performed by the other employees. Although unlike other employees they may work with units requiring refrigerants, the type of products worked on by certain employees is not a dispositive factor in defining an appropriate unit that excludes other employees working at the same location. *Kelly Business Furniture*, 288 NLRB 474, 479 (1988). While the EPA-certified Mechanics perform more installation work than Non-certified Mechanics, the disparity is not great enough to defeat their community of interest. The Petitioner also contends that the EPA-certified employees have a separate community of interest because they are assigned a vehicle, which they may take home at night. However, the record does not support this claim, as not all employees with EPA certifications are assigned vehicles, while at least one employee without an EPA certification is assigned a vehicle.⁸

Therefore, considering the above criteria, I find that the record amply demonstrates that the EPA-certified Mechanics share a community of interest with the Non-certified Mechanics. The petitioned-for unit is not composed of a distinct and homogenous group of employees with interests separate from those of other employees and thus is not an appropriate unit. Accordingly I find that the smallest appropriate unit including the EPA-certified employees must also include the Non-certified Mechanics, as well as Mechanic/Truck Drivers, and I shall direct an election in that unit. *Bartlett Collins Co.*, supra; *Commercial Testing & Engineering Co.*, 248 NLRB 682 (1980); *Chromalloy Photographic Industries*, 234 NLRB 1046 (1978).⁹

V. THE ELIGIBILITY OF CASIMIRO

In 2003, the Employer hired Brian Casimiro for the summer months to assist with the service, delivery, and installation of refrigeration units.¹⁰ When Lillis hired Casimiro, he told him that he would be laid off at the end of the summer, and at the time of the hearing it was expected that Casimiro would be terminated within a week or 10 days. For the past three years, the Employer has hired one employee every summer, to assist during its busiest period. All of these employees were terminated at the end of the season and were not rehired in subsequent years.

The Petitioner contends that Casimiro is a seasonal employee who should be included in the unit. It is the Board's policy to include in a bargaining unit seasonal employees who have a reasonable expectation of reemployment in future seasons but to exclude temporary or casual employees. Factors which the Board considers in determining the eligibility of seasonal employees include the size of the area labor force, the stability of the employer's labor requirements and the extent to which it is dependent upon seasonal labor, the actual reemployment season-to-season of the employee complement, and the employer's recall or preference policy regarding seasonal employees. *Macy's East*, 327 NLRB 73 (1998); *Maine Apple Growers*, 254 NLRB 501, 502-503 (1984).

⁸ Specifically, Schmidt and Casimiro have not been assigned vehicles, while White has a vehicle but no certification.

⁹ The Petitioner does not contend, and I do not find, that the EPA-certified Mechanics constitute a separate craft unit. In this regard, the EPA-certified employees do not take part in any formal training or apprenticeship programs, aside from the training needed to acquire the certification, and their job duties overlap with the duties of the Non-certified Mechanics. See *Monsanto Co.*, 183 NLRB 415, 416 (1970).

¹⁰ Casimiro has an EPA certification.

In this case, the Employer told Casimiro that he was hired solely for the 2003 summer season, and the Employer has not previously rehired its summer employees in subsequent years. Accordingly, I find that he does not have a reasonable expectation of recall for further employment, and I shall not include him in the unit. *Indiana Bottled Gas Co.*, 128 NLRB 1441, 1442-1443, fn. 4 (1960); *Sealite, Inc.*, 125 NLRB 619, 619-620 (1959).¹¹

VI. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All Mechanics and Mechanic/Truck Drivers employed by the Employer at its 650 East Erie Avenue, Philadelphia, Pennsylvania facility, excluding all other employees, clerical employees, guards, and supervisors as defined in the Act.

The Petitioner has indicated that it is willing to proceed to an election in any unit found appropriate. Accordingly, the Petitioner will be given the opportunity to proceed to an election in the unit set forth above. The Petitioner's showing of interest may now be inadequate due to the additional employees included in the unit as a result of this Decision. Accordingly, the Petitioner has 14 days from the issuance of this Decision to augment its showing of interest, if necessary. See, *NLRB Casehandling Manual (Part Two), Representation Proceedings*, Sec. 11031.2. If the Petitioner fails to submit an adequate showing of interest within this period, or to withdraw the petition, the petition will be dismissed without further order. The Direction of Election set forth below is thus conditioned on the Petitioner having an adequate showing of interest. See *Alamo Rent-A-Car*, 330 NLRB 897 (2000). In the event that a request for review is filed with respect to this Decision, the foregoing requirement will be suspended until the Board rules on the request for review.

¹¹ The Petitioner asserts in its brief that there is insufficient record evidence to make a determination as to this issue and seeks an inference that Casimiro is eligible to vote or in the alternative requests to supplement the record. The Petitioner's requests are denied because there is sufficient record evidence to decide this issue.

VII. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by **United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S. and Canada, Steamfitters Local 420**. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within **7** days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **September 19, 2003**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile

transmission at (215) 597-7658. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

VIII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EDT on **September 26, 2003**.

Signed: September 12, 2003

at Philadelphia, PA

/s/

DOROTHY L. MOORE-DUNCAN

Regional Director, Region Four

Board Digest Numbers:

177-3901

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